ON FREEDOM OF SELF-EXPRESSION, TO PROTECT THE INDEPENDENCE OF THE LITHUANIAN NATIONAL RADIO AND TELEVISION

In fulfilling the functions of the national human rights institution (Articles 3 (2) and 19\(^2\) (1) of the Law on the Seimas Ombudsmen of the Republic of Lithuania (hereinafter – the Law), the Seimas Ombudsmen’s Office seeks to bring national legislation in line with the international obligations of the Republic of Lithuania in the area of human rights (Article 19\(^2\) (5) of the Law) and makes proposals to the state and municipal institutions and institutions on human rights issues (Article 19\(^2\) (2) (4)).

On 26 October 2018, the Seimas Ombudsmen’s Office received letter No. SN-S-047 of 25 October 2018 by a group of members of the Seimas of the Republic of Lithuania “Enquiry concerning the conclusion ‘Concerning the Lithuanian National Radio And Television management, financial and economic activities’ required to conduct a parliamentary investigation on the Lithuanian National Radio And Television management, financial and economic activities by the temporary investigation commission of the Seimas of the Republic of Lithuania, requesting to evaluate whether the draft resolution (hereinafter referred to as the “Project”) No. XIIIP-2656 of the Seimas ‘Concerning the conclusion to the parliamentary investigation concerning the investigation of the Lithuanian National Radio And Television management, financial and economic activities conducted by the temporary investigation commission of the Seimas of the Republic of Lithuania’, which intends to modify the management structure of the Lithuanian National Radio And Television, thus potentially limiting the independence of the Lithuanian National Radio And Television, is not in conflict with the international obligations of the Republic of Lithuanian in the field of human rights.
Without assessing the specific proposals of the Seimas temporary investigation commission, formulated in Project No. XIIP-2656, the Seimas Ombudsmen’s Office as a national human rights institution advocates the need to protect the freedom of expression guaranteed by the Constitution of the Republic of Lithuania (hereinafter referred to as the “Constitution”) and the European Convention for the Protection of Human Rights and Fundamental Freedoms by ensuring the independence of the national broadcaster.

In the democratic societies, the media play a key role not only in informing the public about the events in the country and in the world, but also in enabling people to exercise their civil rights – to participate in making decisions that are important to them. Already at its first session, in 1946, the United Nations General Assembly in adopted a resolution stating that freedom of information is a fundamental human right – the foundation of all the freedoms that the United Nations has consecrated to defend. In the report of 1995, United Nations Special Rapporteur on Freedom of Expression, Abid Hussain developed this concept, emphasizing that freedom will not be effective if a person does not have access to information. Thus, the right to information is a fundamental value of democracy that needs to be safeguarded. Various news in the media have a direct and indirect impact on the democratic processes of the society, and freedom of expression and expression are guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the “ECtHR”) in other international treaties to protect democratic values. The Constitutional Court of the Republic of Lithuania has emphasized that the Constitution guarantees and protects the public interest to be informed, that the constitutional freedom to unhindered the search, receipt and dissemination of information and ideas is one of the foundations of an open, fair, sustainable civil society, a democratic state, it is an important pre-condition for the realization of various individual rights and freedoms established by the Constitution. In addition, the court also pointed out that the values enshrined in the Constitution form a harmonious system. Therefore, by guaranteeing the implementation of the freedom of information, the law can not create pre-conditions for violating other constitutional values.¹

The European Court of Human Rights (hereinafter referred to as the “ECtHR”) has repeatedly argued that freedom of expression and the debate taking place in society are a cornerstone of a democratic society. The ECtHR has recognized that the public has the right to have access to the information of a general interest, therefore, when it comes to information on matters of public interest, the ECtHR pays special attention to measures taken by national authorities that are potentially detrimental to the media’s involvement in public debate on matters of public interest. Associate Professor of the Mykolas Romeris Law School of the Mykolas Romeris University and the Institute of International and European Union Law, Katažina Mikša observes that Article 10 of the ECHR, which ensures freedom of expression, includes, among other things, freedom of the press, radio and television, since there is no democratic society without free and abundant press. This includes the freedom to transmit and receive information through broadcasting and other electronic media, and therefore

any state interference with the activities of a public service broadcaster must comply with the requirements of Article 10 (2) of the ECtHR.2

Noting the need to ensure the independence of public service broadcasters, as enshrined in the recommendations of the Committee of Ministers of the Council of Europe (hereinafter referred to as “EC”) No. R(96)10 “Guarantees for the independence of public service broadcasting”, the European Commission for Democracy through Law (hereinafter referred to as the “Venice Commission”) emphasizes the importance of the general principles applicable to broadcasters’ management and supervisory bodies to protect them from political influence3. Moreover, the “Explanatory memorandum” (hereinafter referred to as the “Memorandum”), which is part to the Recommendations No. R(96)10 “Guarantees for the independence of public service broadcasting”, emphasizes that editorial independence is inseparable from the institutional freedom of the public service broadcaster4. In the case of Manole and others against Moldova the ECHR stressed that standards that were agreed by the Committee of Ministers of the Council of Europe, sets out an approach to be followed by Member States in interpreting Article 10 of the ECtHR. This court ruling confirmed that public service broadcaster’s guarantees of independence can be understood as a positive public authority’s commitment under the ECHR:

“109. In order to fulfil this commitment [under Article 10 of the European Convention on Human Rights] <...> it is important to establish a legal framework that ensures the independence of TRM [Teleradio-Moldova] from political influence and control”.5

The ECHR ruling stresses the importance of the independence established by the law of the public service broadcaster from the political and economic influence. In the light of the practice elaborated by the ECHR, the Venice Commission emphasizes that the requirement of independence, which applies to the governing bodies of the public service broadcaster, is also applicable to the public service broadcasting bodies. Therefore the Memorandum establishes that the supervisory bodies of public service broadcasters should be clearly defined by law and their members should be appointed in accordance with the principles of openness, independence and pluralism and represent the public interest6. K. Mikša points out that the ECHR in its statement on the independence of the public broadcaster, on the grounds of the resolution of the Committee of Ministers of the Council of Europe, No. 1 “The Future of Public Service Broadcasting”, stated that states committed to ensuring the independence of all broadcasters from political and economic interference7. In addition, in the Recommendations Rec(2000)23 of the Committee of Ministers of the Council of Europe “Regarding the independence and functions of regulators of public service broadcasters” it is stressed that

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5 European Court of Human rights (2010) Manole and others vs. Moldova, application no. 13936/02.


“rules and procedures that regulate or affect the operation of regulators should be clearly defined and their independence protected”. In addition, the recommendations emphasize that members of the supervisory authority should be protected from the influence of political power and appointed in accordance with the principles of pluralism and publicity adopted by democratic societies, and their independence is enshrined in a clear definition of the principles of their dismissal, in order to avoid the dismissal of the members of the supervisory authority from office as a means of political pressure.

It should be noted that the role of the public service broadcaster in the democratic societies is exceptional, and the European Parliamentary Assembly, the Committee of Ministers of the Council of Europe, has repeatedly called on the Member States to establish the functions of the public service broadcaster’s management and supervisory authorities by clearly defining the principles for the appointment and dismissal of their members and accountability without creating any preconditions to have a political and/or economic influence on the public broadcaster. Speaking on media freedom constraints, Council of Europe’s Commissioner for Human Rights Nils Muižnieks has observed that Members of the Council of Europe should rely on measures and implement all the standards and principles set out in the various recommendations of the Committee of Ministers of the Council of Europe on the independence of public service broadcasters, including legal instruments to ensure public editorial independence and institutional autonomy of the broadcaster, avoiding politicization of the public service broadcaster.

Summarizing the above, the initiatives that would have political and/or economic influence on the public broadcaster, thus violating the provisions of Article 10 of the ECtHR, should be avoided.

Sincerely yours,

Head of the Seimas Ombudsmen’s Office

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